

APPEAL NO. 010104

Following a contested case hearing (CCH) commenced on December 20, 2000, with the record closing on December 22, 2000, and pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act), the hearing officer resolved the disputed issue by determining that the decedent's fatal heart attack on _____, was not compensable. The appellant (claimant/beneficiary), the decedent's widow, appeals this decision arguing that the hearing officer incorrectly held that medical evidence was necessary to prove the claimant/beneficiary's theory of the case, which was that the nature of the decedent's work resulted in a delay in treatment that caused a survivable heart attack to become a fatal heart attack. The respondent (self-insured) responds that the hearing officer was correct in finding that the evidence was insufficient to prove that the decedent's fatal heart attack was compensable.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The facts of this case are largely undisputed and the issue for our review is the relatively narrow one of whether the claimant/beneficiary needed medical evidence to prove her case. The evidence established that the decedent worked for the self-insured as a prison guard. The decedent was on duty on _____, and while at work, began having chest pains at 11:45 a.m. The decedent was taken to the prison infirmary and an ambulance was called. There was evidence that the equipment in the prison infirmary was inadequate to treat the decedent's heart attack and that the ambulance was delayed by having to go through the prison's security system, including a gate that was stuck. While there is conflicting evidence concerning the decedent's time of death, there is some evidence that the decedent was dead by the time the ambulance arrived at 12:30 p.m.

The crux of the hearing officer's rationale in deciding that the decedent's fatal heart attack was not compensable is set out in the portion of her decision labeled "DISCUSSION," where she states in part as follows:

[A]s Claimant Beneficiary has wisely conceded, [decedent's] underlying heart attack does not constitute a compensable injury. However, Claimant's Beneficiary's argument to the effect that the secure nature of [decedent's] work environment delayed his receipt of reasonable and necessary medical attention, thereby aggravating the severity of his heart attack to the point that it became fatal is worthy of consideration, since it is settled law that the compensable aggravation of an otherwise noncompensable injury or medical condition will, in and of itself, constitute a compensable injury. While it may well be that the secure nature required by [decedent's] employment as a prison guard delayed his receipt of medical care on _____, and that such delay caused an otherwise survivable heart attack to become fatal, the

Hearing Officer is not of the opinion that Claimant Beneficiary has proved such matters by a preponderance of the evidence. In particular, the Hearing Officer notes that the record of the [CCH] is devoid of any medical evidence¹ to indicate that [decedent] probably would have survived his heart attack of _____ but for a delay in medical treatment, and the lack of such evidence therefore relegates Claimant Beneficiary's allegations to the realm of mere speculation, which is not a proper basis for a Decision in Claimant Beneficiary's favor in this case.

On appeal, the claimant/beneficiary argues that in reaching the above determination the hearing officer applied an incorrect evidentiary standard. Specifically, the claimant/beneficiary argues that the hearing officer's statement in footnote 1 of her decision is incorrect and that medical evidence is not necessary to prove whether a heart attack is compensable. The claimant/beneficiary cites Henderson v. Travelers Ins. Co., 544 S.W.2d 649 (Tex. 1976)² and Stodghill v. Texas Employers Insurance Ass'n, 582 S.W.2d 102 (Tex. 1979) in favor of this position. We find that neither of these cases are controlling in the present case. They deal with the compensability of heart attacks prior to the 1989 Act, which, in Section 408.008, significantly changed what is necessary to prove a compensable heart attack from prior law. More importantly, these cases only address the evidence required under prior law to prove a heart attack compensable and do not address the situation where the question is not the compensability of the heart attack itself, but the compensability of the fatal injury due to aggravation of the heart attack from a delay in treatment.

We find no controlling Texas case law directly on the question before us, which is whether medical evidence is necessary to prove that the delay in treatment aggravated the decedent's heart attack, causing a survivable heart attack to become a fatal heart attack. We turn to more general legal principles to answer this question. As we stated in Texas Workers' Compensation Commission Appeal No. 92187, decided June 29, 1992:

A claimant has the burden of proving by a preponderance of the evidence that an injury occurred while in the course and scope of the employment. Reed v. Aetna Casualty & Surety Co., 535 S.W.2d 377 (Tex. Civ. App.-Beaumont 1976, writ ref'd n.r.e.). In proving a compensable injury, a claimant must link the contended injury to an event at the work place and establish a causal relationship between the injury and the employment. Texas Workers' Compensation Commission Appeal No. 92108, decided May 8, 1992. Where the subject of injury is not so scientific or technical in nature

¹Since the probability of surviving a heart attack appears to be a matter which is outside the realm of knowledge available to members of the general public, it appears to the Hearing Officer that expert medical evidence is necessary to establish the likelihood that [decedent] would have survived his heart attack of _____ had it not occurred within the secure environment of his employment.

²The claimant/beneficiary incorrectly cites this decision in her brief as 554 S.W.2d 649.

as to require expert testimony, lay testimony and circumstantial evidence may suffice to establish causation. See Travelers Insurance Company v. Strech, 416 S.W.2d 591 (Tex. Civ. App.-Eastland 1967, writ ref'd n.r.e.); Northern Assurance Company of America v. Taylor, 540 S.W.2d 832 (Tex. Civ. App.-Texarkana 1976, writ ref'd n.r.e.). However, where the matter of causation is not an area of common experience, expert or scientific evidence may be essential to satisfactorily establish the link or causation between the injury and the employment.

Applying these principles, we hold that, under the circumstances of the present case, scientific evidence was required to prove the claimant/beneficiary's contention that the employment-related delay in treatment caused the heart attack to be fatal. We find no error in the hearing officer's finding that the claimant/beneficiary failed to prove the fatal heart attack was compensable absent such evidence.

The decision and order of the hearing officer are affirmed.

Gary L. Kilgore
Appeals Judge

CONCUR:

Thomas A. Knapp
Appeals Judge

Robert E. Lang
Appeals Panel
Manager/Judge